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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re L.L., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

B.S. et al.,

Defendants and Appellants.

D074313

(Super. Ct. Nos. J515323, J515323B)

APPEAL from orders of the Superior Court of San Diego County, Ana L. Espana,  
Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant  
and Appellant B.S.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and  
Appellant D.Z.

Thomas E. Montgomery, County Counsel, John E. Philips and Kristen M. Ojeil,  
Deputy County Counsel for Plaintiff and Respondent.

D.Z., L.L.'s mother (Mother), appeals from juvenile court orders terminating her parental rights to L.L. and choosing adoption as L.L.'s permanent plan. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> Mother contends we must reverse the orders because the court erred in finding the beneficial parent-child relationship exception to adoption did not apply, and the court should have ordered legal guardianship for L.L. instead. (§ 366.26, subd. (c)(1)(B)(i).) L.L.'s biological father, B.S., also appeals, joins in Mother's arguments, and requests reversal of the order terminating his parental rights to L.L. if we reverse the order terminating Mother's parental rights to L.L. (See *In re Mary G.* (2007) 151 Cal.App.4th 184, 208.) In 2011, B.S. pleaded guilty to voluntary manslaughter and was sentenced to state prison for a 12-year term. B.S. is currently incarcerated.

We conclude there is substantial evidence to support the court's finding the beneficial parent-child relationship exception to adoption did not apply in this case. We therefore affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

We take the factual background in part from this court's prior opinion in this matter. (*In re L.L.* (2017) 13 Cal.App.5th 1302.) L.L. was born in 2006 and tested

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<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

positive for methamphetamines. She was taken into protective custody. Mother participated in reunification services and was later reunified with L.L.<sup>2</sup>

In June 2016, Mother was arrested for probation violations after law enforcement authorities searched her home under a Fourth Amendment waiver and found drugs, drug paraphernalia and sulfuric acid that were accessible to L.L. L.L. stated that T.L. took care of feeding her and transporting her to school.<sup>3</sup> The Health & Human Services Agency's (the Agency) June 2016 status review report stated that L.L. started staying with her aunt and uncle: "[L.L. was] doing well at her current relative placement. She [was] in a loving and stable home and [had] a structured schedule. She appears to have adjusted well to her current living situation. [She] appears at ease and comfortable with her relatives. She [was] doing well in school and participating in extracurricular activities." She was healthy and there were no problems or concerns. Her teachers stated she had improved and grown significantly since the last school year.

Mother was incarcerated from September 2016 until November 2016 for a probation violation because she left her substance abuse program. Upon her release, she began drug treatment, individual therapy and a parenting course. She regularly visited L.L. The Agency set these "service objectives" for mother to complete by July 13, 2017: obtain and maintain a stable and suitable residence for herself and L.L.; stay free from

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<sup>2</sup> "L.L.'s older brother also tested positive for drugs on his birth in 2004, was declared a dependent of the juvenile court, and ultimately was adopted in 2005, after Mother and T.L. failed to reunify with him." (*In re L.L.*, *supra*, 13 Cal.App.5th at p. 1306, fn. 2.) T.L. is L.L.'s presumed father.

<sup>3</sup> T.L. is not a party to this appeal.

illegal drugs; obey the law, comply with her probation terms and avoid arrests and convictions; participate in parenting class; and attend substance abuse services. In January 2017, the juvenile court ordered telephone calls and visits between B.S. and L.L. supervised, if L.L. was willing to visit B.S. It also ordered services for Mother and T.L. continued to the 12-month date.

In August 2017, the Agency received referrals alleging that Mother had abused L.L. physically and emotionally. Specifically, one morning, Mother was late for a scheduled unsupervised visit with L.L., who went to the designated meeting spot and left when Mother did not show up. Approximately one hour later, Mother went to the caregiver's home unannounced and uninvited, and demanded that L.L. accompany her. Mother "flipped off" the caregiver and drove away with L.L. Mother returned a few minutes later, pushed her way into the caregiver's home, and told him multiple times in L.L.'s presence that she did not want anything more to do with L.L. The social worker concluded Mother had ignored numerous instructions not to call or go to the home of the caregiver with whom Mother did not get along. The Agency reverted to supervised visits for Mother and L.L., who did not wish to live with Mother or visit her. The Agency subsequently determined the referral was inconclusive as to whether Mother had physically and emotionally abused L.L.

In a December 2017 report prepared for the 18-month status review hearing, the Agency stated that following the August incident, L.L. still requested supervised visits with Mother, and L.L. was concerned Mother's friends were using drugs. L.L. stated she wanted to return to live with T.L. if possible, otherwise she wanted to remain in her

current placement. T.L. said he was unable to care for L.L. because he lacked housing. Mother had informed the Agency she was unable to provide for L.L. financially. The Agency concluded there was not a substantial probability of L.L. returning home by the 18-month status review date, and informed Mother and T.L. that if they were unable to reunify with L.L., she might be placed in a guardianship or put up for adoption. Both Mother and T.L. supported the idea of the current caregivers assuming guardianship of L.L. Accordingly, the Agency recommended termination of the parents' services and the scheduling of a section 366.26 hearing.

The Agency repeated that recommendation in a January 24, 2018 addendum report, in which it pointed out Mother was not attending visits with L.L. and had changed her cellphone number without informing L.L. The Agency concluded: "The mother has had limited contact with [L.L.] and has not been attending her [weekly] visits. [T.L.] has remained sober and is currently looking for housing, but does not want to be selfish and remove L.L. from her current school that is providing her stability. [He agrees] that his services be terminated and hopes that he will be able to file a [section 388 petition] when his circumstances have changed."

In a May 2018 report prepared for the section 366.26 hearing, the Agency stated that Mother was often 30 minutes late for the supervised visits or failed to show up. In a February 2018 incident, Mother argued with L.L., telling her, "Hush, you need to listen to me," while pointing her finger in L.L.'s face. L.L. immediately told the monitor she was scared of Mother and did not want to "get choked out again." That visit ended early. L.L. refused to attend subsequent visitations with Mother, stating that she never had a

good connection with Mother, who tries to buy her love. L.L. stated she was scared of Mother and would not accept her phone calls either because "When I hear my mother's voice I see her yelling face." Mother's reunification services were terminated in February 2018.

The Agency concluded L.L. was happy, stable, developmentally on target, and doing well in her relative placement. She was specifically adoptable because her current relative caregivers wanted to adopt her. Moreover, three paternal relatives were interested in adopting her. There were 22 families in San Diego County willing to adopt someone with L.L.'s characteristics. L.L. told a social worker, "I want a permanent plan of guardianship, but I know that I need adoption," adding that she was "tired of waiting for her parents to get themselves together." L.L. later stated she wanted to stay in her current placement and be adopted by her relative caregivers. She said she wanted to continue having phone calls with B.S. and receive his letters but, at this time, she did not want to see him in person. The Agency recommended termination of parental rights and a permanent plan of adoption for L.L. The Agency reiterated this recommendation in a July 2018 addendum: "L.L. has been in her current placement for about 2 years. She is stable and doing well in this home and she has developed a parent[-]child relationship with her relative caregivers. . . . [Mother] has been provided with 18-months [*sic*] of reunification services and she has failed to demonstrate that she has made much progress towards developing the parental skills to provide a structured environment that will keep her child safe and emotionally healthy. Additionally, [L.L.] is refusing to have any contact with [Mother]. L.L. desires and deserves a stable structure home where she can

continue to thrive and feel safe. The Agency feels that the benefits of permanency through adoption outweigh any detriment associated with terminating parental rights."

On July 12, 2018, the juvenile court terminated parental rights as to Mother, T.L. and B.S., finding that no exception to termination of parental rights in section 366.26, subdivision (c)(1) existed. It stated: "[A]t the end of the day, it's really about [L.L.] and what her needs are. . . . [S]he's at a point in time [of] her life and her age, she's smart, and she knows what it is she needs. And I think she has, definitely, a relationship with her mother and her fathers, but today she understands this is really what's best for her. So the Court is going to adopt the recommendation set forth today." The court added, "And with regard to the exceptions [to section 366.26], we have heard already a little bit about the current relationship between [Mother] and [L.L.], and it's certainly been a troubled relationship. [¶] And we know [B.S.] is in custody, and he's not even eligible for parole until 2020. There's been some contact and phone calls and letters, I believe. But again, none of those relationships—parental relationships—outweigh, at this point, [L.L.'s] need for permanency and stability." The juvenile court approved a permanent plan of adoption for L.L.

## DISCUSSION

Mother contends: (1) she occupied a parental role in L.L.'s life, pointing out she enjoyed liberal unsupervised visits up until just before the section 366.26 hearing; (2) the juvenile court overly emphasized L.L.'s "supposed wishes and did not properly consider the nature and scope of the relationship between [M]other and [L.L.]"; and (3) the record

established the beneficial parent-child exception applied; therefore, the court should have ordered L.L. into a legal guardianship with her relative caretakers.

"After reunification services have terminated, the focus of a dependency proceeding shifts from family preservation to promoting the best interest of the child including the child's interest in a 'placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. [Citation.]' [Citation.] The purpose of a section 366.26 hearing is to 'provide stable, permanent homes for' dependent children. [Citation.] At a section 366.26 hearing the juvenile court has three options: (1) to terminate parental rights and order adoption as a long[-]term plan; (2) to appoint a legal guardian for the dependent child; or (3) to order the child be placed in long[-]term foster care." (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*)). If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, the court must select adoption as the permanent plan unless the court finds a compelling reason for determining termination of parental rights would be detrimental to the child under any of the specified statutory exceptions. (§ 366.26, subds. (c)(1)(A), (B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) The parent has the burden of establishing one of the specified statutory exceptions applies. (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because a section 366.26 hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary



case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

The beneficial parent-child relationship exception, upon which Mother relies, applies if termination of parental rights would be detrimental to the child because Mother has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) Courts have interpreted the phrase " 'benefit from continuing the . . . relationship' " "to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord, *In re Jason J.* (2009) 175 Cal.App.4th 922, 936.)

A parent asserting this exception cannot meet his or her burden by showing frequent, friendly and loving contact with the child or even the existence of a parent-child bond. (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1200; *In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) Rather, the parent must show he or she serves a parental role for the child of such quality that severing the parent-child relationship would harm

the child to the point of outweighing the benefits of adoption. (*In re L.S.*, *supra*, at p. 1199; *In re C.F.*, *supra*, at p. 555; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

We apply the substantial evidence standard of review to the determination of whether a beneficial parental relationship exists. We apply the abuse of discretion standard of review to the determination of whether there is a compelling reason for finding the termination of parental rights would be detrimental to the child. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

We conclude the juvenile court did not err in determining L.L. would greatly benefit from the security of a stable, permanent home with committed, capable adoptive parents. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) We agree with the juvenile court that sufficient evidence showed that although Mother had a relationship with L.L., it was not so strong that termination of parental rights would be detrimental to L.L. As Mother acknowledged, her visits with L.L. had declined considerably in the last several months before the court terminated parental rights. L.L. was afraid of Mother since the August 2017 altercation and this was reflected in the February 2017 incident in which L.L. was scared Mother would hit her. Thereafter, L.L. did not wish to visit or speak to Mother on the telephone because of the negative memories it revived for L.L.

Contrary to Mother's claim, the court did not overemphasize L.L.'s wishes. They were just one factor among others the court considered, including Mother's failures to attend scheduled visits and assume a more parental role in L.L.'s life. The court properly considered L.L.'s wishes, which she made known to the social worker. Section 366.26, subdivision (h)(1) provides that at all proceedings under this section, the court shall

consider the wishes of the child and shall act in the best interests of the child. (*In re Diana G.* (1992) 10 Cal.App.4th 1468, 1480.) Further, section 366.26 authorizes a court to refuse to terminate parental rights after a finding of adoptability if the child is 12 years of age or older and objects to the termination of parental rights. (§ 366.26, subd. (c)(1)(B)(ii).)

Finally, we conclude that Mother's preference for legal guardianship for L.L. was not binding on the juvenile court. When a child is adoptable, there is a strong preference for adoption over less secure and stable permanent plans. (*In re J.C.* (2014) 226 Cal.App.4th 503,528; *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 251.) The court did not abuse its discretion in concluding that the termination of parental rights would not be detrimental to L.L.

#### DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

DATO, J.